

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 4323

IN THE MATTER OF:

Served June 21, 1994

Investigation of Unauthorized  
Operations of REGENCY LIMOUSINE  
SERVICE, INC.

)  
)  
)

Case No. MP-94-01

Investigation of Unauthorized  
Operations of REGENCY SERVICES,  
INC., and PAUL B. RODBERG

)  
)  
)

Case No. MP-94-08

Application of REGENCY SERVICES,  
INC., for a Certificate of  
Authority -- Irregular Route  
Operations

)  
)  
)  
)

Case No. AP-94-18

The investigation of Regency Limousine Service, Inc. (Old Regency), Case No. MP-94-01, was initiated in Order No. 4239 on January 13, 1994. Old Regency was directed to produce copies of its vehicle manifests and customer invoices for transportation performed during the period beginning February 2, 1993, and ending on the date Order No. 4239 was issued, and to show cause why it should not be found subject to a civil forfeiture for knowing and willful violations of the Compact and regulations thereunder. Old Regency was granted a 30-day extension and thereafter timely responded to the show cause portion of the order, while requesting additional time in which to produce the required documents. Old Regency has yet to produce those documents.

The investigation of Regency Services, Inc. (New Regency), and Paul B. Rodberg, Case No. MP-94-08, was initiated and consolidated with the investigation of Old Regency in Order No. 4263, served March 25, 1994. New Regency and Mr. Rodberg were directed to produce copies of vehicle manifests and customer invoices for transportation performed by either or both during the period beginning January 1, 1994, and ending on the date Order No. 4263 was issued, and to show cause why they should not be found jointly and severally subject to a civil forfeiture for knowing and willful violations of the Compact and regulations thereunder. New Regency also was directed to file a statement disclosing, inter alia, the nature of Mr. Rodberg's employment with New Regency, including title, responsibilities and duties. New Regency complied. Mr. Rodberg did not respond.

On April 22, 1994, New Regency (applicant), filed an application for a certificate of authority to transport passengers, together with baggage in the same vehicles as passengers, in irregular route operations between points in the Metropolitan District. The application was docketed as Case No. AP-94-18, and pursuant to Commission Regulation No. 20-02 is hereby consolidated with Case Nos. MP-94-01 and MP-94-08.

## I. THE INVESTIGATIONS

### A. Old Regency

By virtue of Old Regency's failure to produce its manifests and invoices for the period beginning February 2, 1993, and ending January 13, 1994, it is deemed established that Old Regency was in violation of the Compact throughout the period.<sup>1</sup> The record shows that during this time Old Regency was on notice that its operations in the Metropolitan District might be in violation of the Compact.<sup>2</sup> Accordingly, said violations are found to be knowing and willful.<sup>3</sup>

Pursuant to the Compact, Title II, Article XIII, Section 6(f), the Commission will assess a civil forfeiture against Old Regency in the amount of \$500 per day for 346 days, for a total of \$173,000. In addition, the Commission will assess a civil forfeiture against Old Regency in the amount of \$500 for knowing and willful failure to produce the documents specified in Order No. 4239.<sup>4</sup>

The record indicates that Old Regency is inactive and insolvent. The Commission accordingly will suspend the assessments against Old Regency, contingent on Old Regency filing approved articles of dissolution or official notice of termination of corporate charter. Should Old Regency fail to timely file said articles or notice or pay said forfeiture, New Regency shall immediately disassociate itself from Paul Rodberg, Old Regency's owner/president and New Regency's general manager, and Paul Rodberg shall immediately cease and desist from any employment directly connected with the transportation of passengers for hire in the Metropolitan District.

### B. New Regency & Paul Rodberg

Article XI, Section 6, of the Compact provides that: "A person may not engage in transportation subject to this Act unless there is in force a 'Certificate of Authority' issued by the Commission authorizing the person to engage in that transportation." Article XI, Section 1, provides: "This Act shall apply to the transportation for hire by any carrier of persons between any points in the Metropolitan District . . . ."

Article XI, Section 3(f), excludes from the application of the Compact "matters other than rates, charges, regulations, and minimum

---

<sup>1</sup> In re Destination Washington, Ltd., & Phoenix Tours, Inc., No. MP-91-30, Order No. 3902 at 9 (Mar. 17, 1992).

<sup>2</sup> See Order No. 4239 at 1 (2/1/93 notice of WMATC jurisdiction received 2/2/93).

<sup>3</sup> In re Mustang Tours, Inc., No. MP-93-42, Order No. 4224 (Dec. 15, 1993); In re Madison Limo. Serv., Inc., No. AP-91-39, Order No. 3914 (Mar. 25, 1992) (on reconsideration); In re Omnibus Corp., No. 380, Order No. 1762 (Oct. 26, 1977).

<sup>4</sup> Order No. 3902 at 10-11.

insurance requirements relating to" other vehicles that perform a bona fide taxicab service, where the other vehicle has a seating capacity of 9 persons or less, including the driver. Under Commission Regulation No. 51-09(c), such service must be "priced at rates based on the duration and/or distance of the transportation rendered." Flat-rate service -- where the risk of delay and route deviations is placed on the carrier -- does not qualify for exclusion under Section 3(f).<sup>5</sup>

New Regency's invoices show that it transported passengers for hire between points in the Metropolitan District continuously throughout the 84-day period beginning January 1, 1994, and ending March 25, 1994. New Regency performed that transportation each day in vehicles seating more than nine persons, including the driver, and/or at flat rates. New Regency did not hold a certificate of authority while performing that transportation, thus violating the Compact.

Article XIII, Section 6(f), provides that a person who knowingly and willfully violates a provision of the Compact shall be subject to a civil forfeiture of not more than \$1,000 for the first violation and not more than \$5,000 for any subsequent violation and that each day of the violation constitutes a separate violation. The term "knowingly" means with perception of the underlying facts, not that such facts establish a violation.<sup>6</sup> The term "willfully" does not mean with evil purpose or criminal intent but means purposely or obstinately, with intentional disregard or plain indifference.<sup>7</sup>

We find that New Regency became aware of the potential need for a certificate of authority on January 14, 1994 -- at the latest -- when its general manager, Paul Rodberg, signed for a copy of the notice of investigation into Old Regency's operations, which had been sent to New Regency's mailing address. At that point, the onus was on New Regency to ensure that its operations, which are essentially identical in nature to Old Regency's, were in compliance with the Compact.<sup>8</sup> Accordingly, the violations occurring after January 14, 1994, are found to be knowing and willful on the part of New Regency.<sup>9</sup>

---

<sup>5</sup> In re O. Oluokun, Inc., t/a Montgomery County Limo, No. MP-93-43, Order No. 4225 at 2 (Dec. 16, 1993) (quoting from In re Title II, Art. XII, § 1(c) of the Compact, No. MP-83-01, Order No. 2559 at 9 (May 24, 1984)).

<sup>6</sup> Order No. 4224; Order No. 3914.

<sup>7</sup> Order No. 4224; In re Madison Limo. Serv., Inc., No. AP-91-39, Order No. 3891 (Feb. 24, 1992).

<sup>8</sup> Order No. 4224; Order No. 1762.

<sup>9</sup> Order No. 4224; Order No. 3914; Order No. 1762. This finding is buttressed by the absence of any disclaimer of guilty knowledge in New Regency's response to the allegation of knowing and willful violations in Order No. 4263 and by Mr. Rodberg's complete failure to make any response at all.

We also hold Mr. Rodberg personally liable as the "animating force" or "central figure" responsible for this corporate misconduct.<sup>10</sup> As New Regency's general manager and Old Regency's owner/president, Mr. Rodberg is the common link in an unbroken chain of malefactions perpetrated first by Old Regency and then by New Regency. Mr. Rodberg's personal management of Old Regency's regulatory, financial and operational affairs and New Regency's administrative and operational affairs is well documented. The evidence further shows that Mr. Rodberg caused Old Regency to sell substantially all of its assets to New Regency and then directed New Regency to continue offering the same unlawful service to the same customers as Old Regency. Finally, evidence of Mr. Rodberg's contact with staff in 1984,<sup>11</sup> his failure to respond to the allegation of knowing and willful violations in Order No. 4263, his failure to cause Old Regency to respond to the same allegation in Order No. 4239, and Old Regency's receipt of staff's letter of February 1, 1993,<sup>12</sup> support the finding that Mr. Rodberg has been aware since the commencement of operations by New Regency that some or all of New Regency's operations in the Metropolitan District have been unlawful.<sup>13</sup>

New Regency's invoices show that it conducted approximately 600 trips in vehicles seating more than nine persons, including the driver, and/or at flat rates, on each of the 70 days from January 15, 1994, through March 25, 1994, for a total of 70 knowing and willful violations. Based on a sample of approximately 25 percent of those invoices, the amount of revenue received from the 600 trips is estimated to be approximately \$50,000. Judging from New Regency's income statement for that period, filed as part of its application, the corresponding net profit is approximately \$8,000.

The Commission will assess a civil forfeiture against New Regency and Mr. Rodberg, jointly and severally, in the amount of \$500 per violation, for each of the 70 violations occurring after January 14, 1994, for a total of \$35,000. The Commission will suspend all but \$10,000, in recognition of New Regency's cooperation during

---

<sup>10</sup> United States v. Sutton, 795 F.2d 1040, 1060-61 (Temp. Emer. Ct. App. 1986), cert. denied, 479 U.S. 1030 (1987); Sauder v. Department of Energy, 648 F.2d 1341 (Temp. Emer. Ct. App. 1981); see In re Japan Travelers Serv., Inc., & Hideo Koga, No. MP-92-36, Order No. 4019 (Nov. 23, 1992) (owner/president held jointly and severally liable with corporation).

<sup>11</sup> See Order No. 4239 at 1 n.1 (discussing communication between staff and Rodberg).

<sup>12</sup> See supra, n.2.

<sup>13</sup> See Order No. 3902 at 10 (nonresponse of accused permits negative inference regarding state of mind); In re Napoleon Hill, No. 177, Order No. 817 (May 14, 1968) (same); In re William J. Hill, No. 76, Order No. 453 (Mar. 11, 1965) (same).

the investigation and the estimated \$8,000 in profit realized from its unlawful conduct.<sup>14</sup>

The Commission will assess a civil forfeiture against Mr. Rodberg alone in the amount of \$500 per violation, for each of the 14 violations occurring before January 15, 1994, for a total of \$7,000, none of which is suspended, owing to Mr. Rodberg's lack of cooperation during the investigation and the central role he has played in both carriers' illicit operations. Should Mr. Rodberg fail to timely pay said forfeiture, New Regency shall immediately disassociate itself from Mr. Rodberg, and Mr. Rodberg shall immediately cease and desist from any employment directly connected with the transportation of passengers for hire in the Metropolitan District.

## II. THE APPLICATION

Notice of New Regency's application was served on April 29, 1994, in Order No. 4289, and applicant was directed to publish further notice in a newspaper and file an affidavit of publication and an amended proposed tariff. Applicant complied. The application is unopposed.

### A. SUMMARY OF EVIDENCE

The application includes information regarding, among other things, applicant's corporate status, facilities, proposed tariff, finances, and regulatory compliance record.

Applicant proposes commencing operations with 20 vehicles, with seating capacities ranging from 4 to 46 passengers. Applicant's proposed tariff contains flat rates for airport transfer service and hourly rates, with minimum charges, for charter service.

Applicant filed a balance sheet as of March 31, 1994, showing current assets of \$117,043; net fixed assets of \$145,955; other assets of \$5,433; current liabilities of \$99,206; long-term liabilities of \$94,709; and equity of \$74,516. Applicant's operating statement for the three months ended March 31, 1994, shows operating income of \$341,429; operating expenses of \$289,121; and net income of \$52,308. Applicant's projected operating statement for the first 12 months of WMATC operations shows operating income of \$1,200,000; operating expenses of \$1,179,200; and net income of \$20,800.

---

<sup>14</sup> See Order No. 4019 (\$10,000 forfeiture assessed for 76 days and \$7,700 in insurance savings). Another approximately 250 otherwise exempt trips during this period also required a certificate of authority because those trips were not "conducted in a vehicle engaged solely in" bona fide taxicab service within the meaning of Article XI, Section 3(f) of the Compact. Commission Regulation No. 51-09(d). The profits from these trips have been excluded from this analysis because whereas gains from noncertificated operations in vehicles seating more than 9 persons and/or at flat rates are always illgotten, gains from noncertificated operations in vehicles seating less than 10 persons at hourly rates are frequently legitimate.

Applicant certifies it has access to, is familiar with, and will comply with the Compact, the Commission's rules and regulations, and United States Department of Transportation regulations relating to transportation of passengers for hire. Applicant further certifies that neither applicant nor any person controlling, controlled by, or under common control with applicant has any control relationship with a carrier other than applicant.

#### B. DISCUSSION

This case is governed by the Compact, Title II, Article XI, Section 7(a), which provides in relevant part that:

. . . the Commission shall issue a certificate to any qualified applicant . . . if it finds that --

- (i) the applicant is fit, willing, and able to perform [the] transportation properly, conform to the provisions of this Act, and conform to the rules, regulations, and requirements of the Commission; and
- (ii) that the transportation is consistent with the public interest.

The burden is on applicant to establish its financial fitness, operational fitness, and regulatory compliance fitness.<sup>15</sup> Based on the evidence in this record, the Commission finds applicant to be financially fit and operationally fit.

Applicant's compliance fitness is another matter. A determination of compliance fitness is prospective in nature.<sup>16</sup> When an applicant has a record of violations the Commission considers the following factors in assessing the likelihood of future compliance: (1) the nature and extent of the violations, (2) any mitigating circumstances, (3) whether the violations were flagrant and persistent, (4) whether applicant has made sincere efforts to correct its past mistakes, and (5) whether applicant has demonstrated a willingness and ability to comport with the Compact and rules and regulations thereunder in the future.<sup>17</sup>

Few violations are more serious than operating without authority. We find no mitigating circumstances and regard these violations as flagrant and persistent. On the other hand, New Regency's cooperation with the investigation demonstrates a willingness and ability to comport with Commission requirements in the future, and New Regency's atonement for past transgressions will be

---

<sup>15</sup> Order No. 4224; In re CRW Transp. Sys. Enters., No. AP-85-26, Order No. 2817 (Jan. 22, 1986); In re Dav-El of Wash., D.C., Inc., No. AP-85-14, Order No. 2773 (Oct. 11, 1985); In re Battle's Transp., Inc., No. AP-85-12, Order No. 2722 (June 20, 1985).

<sup>16</sup> Order No. 4224.

<sup>17</sup> Id.

complete upon payment of the forfeiture assessed against it.<sup>18</sup> The Commission remains concerned about the presence of Mr. Rodberg. It appears, however, that he has been relieved of oversight responsibility for regulatory affairs, and New Regency has hired an attorney to advise it on compliance matters. The record, therefore, supports a finding of prospective compliance fitness.<sup>19</sup>

### C. CONCLUSION

The Commission finds New Regency to be fit, willing, and able to perform the proposed transportation properly and to conform with applicable regulatory requirements. The Commission further finds that the proposed transportation is consistent with the public interest. The Commission, therefore, approves the application of New Regency for a certificate of authority subject to New Regency's duty to pay the forfeiture assessed against it.<sup>20</sup>

#### THEREFORE, IT IS ORDERED:

1. That the Commission hereby assesses a civil forfeiture against Regency Limousine Service, Inc., in the amount of \$173,500, for knowing and willful violations of the Compact and Commission Order No. 4239.

2. That the civil forfeiture assessed in the preceding paragraph is hereby temporarily suspended pending the filing by Regency Limousine Service, Inc., of approved articles of dissolution or an official notice of termination of corporate charter, and shall be permanently suspended thereafter.

3. That unless Regency Limousine Service, Inc., files the articles or notice specified in the preceding paragraph within 30 days from the date this order is issued, or such additional time as the Commission may direct or allow, the \$173,500 forfeiture assessed herein shall become immediately due and payable.

4. That the Commission hereby assesses a civil forfeiture against Regency Services, Inc., and Paul B. Rodberg, jointly and severally, in the amount of \$35,000, of which all but \$10,000 is suspended, for knowing and willful violations of the Compact, and that Regency Services, Inc., and Paul B. Rodberg are hereby directed, jointly and severally, to pay to the Commission by money order, certified check, or cashiers check, the sum of ten thousand dollars (\$10,000).

---

<sup>18</sup> Id.

<sup>19</sup> See In re Japan Travelers Serv., Inc., No. AP-92-34, Order No. 4055 (Feb. 17, 1993) (hiring of attorney); In re Ruchman & Assocs., Inc., t/a RAI, Inc., No. AP-91-32, Order No. 3911 (Mar. 25, 1992) (hiring of attorney and reassignment of compliance matters employee).

<sup>20</sup> Order No. 4224.

5. That unless Regency Services, Inc., and/or Paul B. Rodberg complies with the requirement of the preceding paragraph within 30 days from the date this order is issued, or such additional time as the Commission may direct or allow, the full \$35,000 forfeiture assessed herein shall become immediately due and payable.

6. That the Commission hereby assesses a civil forfeiture against Paul B. Rodberg in the amount of \$7,000, for knowing and willful violations of the Compact, and that Paul B. Rodberg is hereby directed to pay to the Commission by money order, certified check, or cashiers check, the sum of seven thousand dollars (\$7,000).

7. That unless Regency Limousine Service, Inc., and Paul B. Rodberg comply with the applicable requirements of this order within 30 days from the date of issuance, or such additional time as the Commission may direct or allow, Regency Services, Inc., shall immediately disassociate itself from Paul B. Rodberg and file with the Commission within 3 business days thereafter a sworn affidavit affirming such disassociation, and Paul B. Rodberg shall immediately cease and desist from any employment directly connected with the transportation of passengers for hire in the Metropolitan District.

8. That Regency Services, Inc., 12120 Conway Road, Beltsville, MD 20705, is hereby conditionally granted, contingent upon its timely compliance with the requirements of this order, authority to transport passengers, together with baggage in the same vehicles as passengers, in irregular route operations between points in the Metropolitan District.

9. That Regency Services, Inc., is hereby directed to file the following documents with the Commission: (a) evidence of insurance pursuant to Commission Regulation No. 58 and Order No. 4203; (b) four copies of a tariff or tariffs in accordance with Commission Regulation No. 55; (c) an equipment list stating the year, make, model, serial number, vehicle number, license plate number (with jurisdiction) and seating capacity of each vehicle to be used in revenue operations; (d) evidence of ownership or a lease as required by Commission Regulation No. 62 for each vehicle to be used in revenue operations; (e) proof of current safety inspection of said vehicle(s) by or on behalf of the United States Department of Transportation, the State of Maryland, the District of Columbia, or the Commonwealth of Virginia; and (f) a notarized affidavit of identification of vehicles pursuant to Commission Regulation No. 61, for which purpose WMATC No. 260 is hereby assigned.

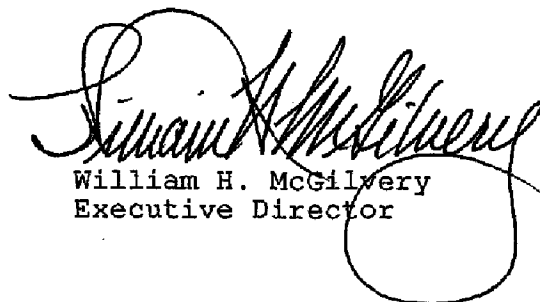
10. That upon its timely compliance with the applicable requirements of this order and acceptance of the documents required by the Commission, Certificate of Authority No. 260 shall be issued to Regency Services, Inc.

11. That Regency Services, Inc., may not transport passengers for hire between points in the Metropolitan District pursuant to this order unless and until a certificate of authority has been issued in accordance with the preceding paragraph.



12. That unless Regency Services, Inc., complies with the applicable requirements of this order within 30 days from the date of issuance, or such additional time as the Commission may direct or allow, the grant of authority herein shall be void and the application shall stand denied in its entirety effective upon the expiration of said compliance time.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS DAVENPORT, SCHIFTER, AND SHANNON:



William H. McGilvery  
Executive Director